IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21847 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL CORPORATION & 3 - Petitioners
Versus
KAUSHALBHAI KANUBHAI BHATT - Respondent

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Appearance :
MR SK JHAVERI with MS JIRGA D JHAVERI for Petitioners.
MR KB PANERI for Respondent.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 12/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Rule. Mr.K.B.Paneri, learned Counsel waives service of notice on behalf of the respondent. Having regard to the facts of the case, the petition is taken up for final disposal today.

2. By filing the instant petition under Article 226 of the Constitution, the petitioners have prayed to issue a writ of mandamus or a writ of certiorari or any other appropriate writ to set aside the order dated August 21, 2006, rendered by the learned Judge, Small Causes Court No.10, Ahmedabad, in Contempt Application No. 193 of 2006, by which the petitioner No.1 i.e. Ahmedabad Municipal Corporation is directed to give effect to the order dated January 20, 2004 passed by the learned Judge, Small Causes Court No.10, Ahmedabad, in M.V.A.No.84 of 2003 and M.V.A.No.144 of 2003, from

Assessment Year 1997-1998 to Assessment Year 2000-2001, on the basis that the gross rateable value of the properties in question was fixed at Rs. 27,300/- continuously, within one month from the date of the order.

3. The respondent No.1 is the owner of the properties bearing Survey Nos.271 & 278, situated in Isanpur Ward of Ahmedabad City. The case of the respondent is that he had purchased those properties for a consideration of Rs.3,90,000/-. The gross rateable value of the said properties was assessed at Rs.1,08,519/- for Assessment Year 1997-1998. Feeling aggrieved, the respondent preferred Municipal Valuation Appeal No.84 of 2003. The learned Judge, Small Causes Court No.10, Ahmedabad allowed the appeal by judgment dated January 20, 2004 and held that the gross rateable value of the premises belonging to the respondent was Rs. 27,300/- for Assessment Year 1997-1998. Again, assessment of the properties belonging to the

respondent was undertaken by the authorities of the Corporation for the Year 2000-2001, and gross rateable value of the properties was assessed at Rs.1,39,117/- for the said Assessment Year. Feeling aggrieved, the respondent preferred Municipal Valuation Appeal No.144 of 2003, which was allowed by the learned Judge, Small Causes Court No.10, Ahmedabad vide judgment dated January 20, 2004. The learned Judge held that gross rateable value of the properties belonging to the respondent for Assessment Year 2000-2001 was Rs.27,300/-. The petitioners have produced copies of those orders collectively at ANNEXURE-B to the petition.

4. The case of the respondent was that the petitioners were duty bound to give effect to the two judgments delivered by the Small Causes Court in respect of Assessment Years 1997-1998 to 2000-2001, and recover the property tax on the basis that the gross rateable value of the properties was

Rs.27,300/- only. The grievance made by the respondent was that the petitioners by not giving effect to the two judgments delivered by the Small Causes Court had committed contempt of Court. Therefore, the respondent filed an application i.e. Contempt of Court Application No.193 of 2006 and prayed to initiate contempt proceedings against the petitioners as well as to direct them to give effect to the two judgments of Small Causes Court from Assessment Years 1997-1998 to 2000-2001.

5. The learned Judge, Small Causes Court No.10, Ahmedabad has allowed the application and directed the petitioner No.1 i.e. Ahmedabad Municipal Corporation to implement the order passed on January 20, 2004 in Municipal Valuation Appeal Nos. 84 of 2003 and 144 of 2003 by giving effect from Assessment Years 1997-1998 to 2000-2001 on the basis that the gross rateable value of the properties was fixed at Rs. 27,300/-

continuously. The case of the petitioners is that the Small Causes Court has no jurisdiction to entertain and pass any order on the application filed under the Contempt of Courts Act, 1971 and, therefore, the impugned order is liable to be set aside. According to the petitioners, the application filed by the respondent on April 26, 2006 was time-barred in view of the provisions of Section 20 of the Contempt of Courts Act, 1971 and, therefore, could not have been entertained by the learned Judge of the Small Causes Court. What is maintained by the petitioners is that the direction given to the petitioners to give effect to the two judgments in respect of Assessment Years 1997-1998 to 2000-2001 is contrary to the law laid down by the Division Bench of this Court and, therefore, deserves to be set aside. Therefore, the petitioners have filed the instant petition and claimed relief to which reference is made earlier.

6. This Court has heard Mr.S.K.Jhaveri, learned Senior Advocate with Ms.Jirga D.Jhaveri, learned counsel for the petitioners, and Mr.K.B.Paneri, learned Counsel for the respondent, at length and in great detail. This Court has also considered the documents forming part of the petition. Though the application was filed by the respondent under the provisions of the Contempt of Courts Act, 1971, no action has been taken by the learned Judge against any of the petitioners and, therefore, the contentions raised in the petition which are based on the provisions of the said Act cannot be accepted. In Municipal Corporation of the City of Ahmedabad v. Oriental Fire & General Insurance Co.Ltd. 1994(2) GLR 1498, the Division Bench has considered the question whether decision of Court in respect of a particular assessment year can be regarded as a decision in respect of assessment for subsequent years also and answered the same in the following terms in

Para-73 of the reported decision.

> "There can be no doubt that according to Rule 21, the entries of the earlier year can be adopted for the subsequent years. Furthermore, every appellate order, which becomes final, has to be given effect to. We are, however, unable to agree with the contention of the learned Counsel that, in the example given above by him, for the assessment year 1982-83 and 1982-83 and onwards, a notice under Rule 15(2) has to be issued, because for the year 1981-82, the appellate Court had reduced the rateable value to Rs.1,500/- after entries for 1982-83 and 1983-84 have been adopted. In the very example, which is given, it is contemplated that the entry for 1981-82 was finalised after the issuance of a valid notice under Rule 15(2). As long as that entry of Rs.5,000/- for the year 1981-82 remains, the same could be adopted by the Commissioner in the subsequent years 1982-83 and 1983-84. If after such adoption for the years 1982-83 and 1983-84, the appellate Court, in respect of the assessment year 1981-82 allows the appeal and reduces the rateable value, the decision in the said appeal can only be regarded as being given for the assessment year 1981-82. In taxation, each year is to be regarded as distinct and separate. The Act does not postulate that the appellate decision for one year will, *ipso facto*, be regarded as a decision for the other years as well. As long as appeals have been filed before the Small Causes Court, or to the High Court, the assessment cannot be regarded as having become final."

7. In view of the authoritative pronouncement by the Division Bench of this Court, which is quoted above, there is no manner of doubt that the Act does not postulate that the appellate decision for one year will, ipso facto, be regarded as a decision for the other years as well. Therefore, the direction given by the learned Judge in the impugned order to the Ahmedabad Municipal Corporation to give effect to the orders dated January 20, 2004 passed in Municipal Valuation Appeal No.84 of 2003 and Municipal Valuation Appeal No.144 of 2003 from Assessment Years 1997-1998 to 2000-2001 on the basis that the gross rateable value of the properties concerned was fixed at Rs. 27,300/- continuously, deserves to be set aside. Mr.K.B.Paneri, learned Counsel for the respondent has made grievance before this Court that effect is not given to the two appellate orders passed for the Assessment Year 1997-1998 and Assessment Year 2000-2001 by the petitioners. Mr.S.K.Jhaveri, learned

Senior Advocate for the petitioners, states at the Bar that the petitioners will give effect to the appellate orders dated January 20, 2004 passed in M.V.A. Nos.84 of 2003 to 144 of 2003 for the Assessment Years 1997-1998 and 2000-2001 respectively on the basis that gross rateable value of the properties concerned for those assessment years was Rs.27,300/-. The statement made at the Bar by the learned Counsel for the petitioners makes it very clear that now, no grievance of the respondent survives and, therefore, the petition deserves to be partly allowed by setting aside part of the direction given by the learned Judge, which is contrary to the Division Bench Judgment of this Court referred to earlier and by giving direction to the petitioners to give effect to the judgment of the Court for the Assessment Years 1997-98 and 2000-01.

For the foregoing reasons, the petition partly succeeds. The order dated August 21,

2006, rendered by the learned Judge, Small Causes Court No.10, Ahmedabad, in Contempt of Court Application No.193 of 2006 directing the petitioners to implement the orders dated January 20, 2004, passed in Municipal Valuation Appeal No.84 of 2003, and Municipal Valuation Appeal No.144 of 2003, for the Assessment Years 1997-98 to 2000-01 on the basis that gross rateable value of the properties was Rs.27,300/- continuously is hereby set aside. The petitioners are directed to give effect to the judgments dated January 20, 2004, rendered in Municipal Valuation Appeal No.84 of 2003, and Municipal Valuation Appeal No.144 of 2003, for Assessment Years 1997-98 to 2000-01 respectively as early as possible and preferably within three weeks from today. Rule is made absolute accordingly. There shall be no orders as to costs.

(J.M.Panchal, J.) (Smt.Abhilasha Kumari, J.)

(Patel)